

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

MARTA MARRERO-ROSADO, on behalf
of her minor son JLSM,

Plaintiff,

v.

AGUSTÍN CARTAGENA, et al.,

Defendants.

Civil No. 05-2063 (SEC/JAF)

OPINION AND ORDER

Plaintiff Marta Marrero-Rosado ("Rosado"), on behalf of her son Jorge Luis Santos Marrero ("JLSM"), brings this action against Defendants Agustín Cartagena ("Cartagena"), Juan R. Díaz-Román ("Román"), Nelson F. Maldonado-Santiago ("Santiago"), Miguel A. Pereira ("Pereira"), Ramón Díaz-Correa ("Díaz"), Dra. Ana Rius-Armendáriz (Armendáriz), Agents A, B, and C, Correctional Officers D, E, and F, Doctors G, H, and I, Lady Jane J, K, L, M, N, O, and Insurance Companies X, W, Z. Docket No. 1 and 51. Before the court are Defendants' Motion for Summary Judgment and Memorandum of Law ("Defendants' Motion") and Defendants' Motion to Strike Plaintiff's Response thereto. Docket Nos. 121 and 138. Defendants' Motion to Strike is **DENIED**. Defendants' Motion has been considered and is **GRANTED in part**.

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I.

Introduction

This case is an action for money damages brought pursuant to 28 U.S.C. §§ 1331, 1343, and 1367 and 42 U.S.C. § 1983 against representatives of the Puerto Rico Police Department, Puerto Rico Department of Corrections, and the Puerto Rico Medical Center (Administración de Servicios Médicos de Puerto Rico). Plaintiff alleges that his father, Maldonado, suffered and died due to the actions or omissions of Defendants. Docket No. 51, ¶4.18. Claims are brought by Rosado on behalf of her son, JLSM. Docket No. 51, at 2, II.

Plaintiff's Section 1983 claims are brought against Defendants in their official and personal capacities for the alleged violation of the Fourth, Fifth, Eighth, and Fourteenth Amendments of the U.S. Constitution. Docket No. 137, at 22. Supplemental claims are brought under Sections 3018 (Fraud, negligence, or delay in fulfilling obligation), 3019 (Liability arising from fraud), 3024 (Losses and damages for which debtor liable), and 5141 (Obligation when damage caused by fault or negligence) in Title 31 of the Laws of Puerto Rico.

With the exception of Section 1983 claims brought against Defendant Román, the only defendant to have any direct interaction with Maldonado, Plaintiff's Section 1983 claims are premised on a theory of supervisory liability. Plaintiff's claims against Defendant

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1 Román, a Puerto Rico police officer in the Vega Baja Precinct, are
2 based on allegations that Román physically struck Maldonado on two
3 occasions and filed a false incident report. Docket No. 51, ¶ 3.2.
4 Defendant Santiago was a supervisor of Officer Román during the
5 relevant time period. Plaintiff's claims against Santiago are based,
6 in part, on an allegation that Santiago approved Román's allegedly
7 false incident report. Docket No. 51, ¶ 3.4. Santiago had no direct
8 interaction with Maldonado during the relevant time period.
9 Defendant Cartagena was the Superintendent of the Puerto Rico Police
10 at the time of the alleged beating and false report, but Cartagena
11 had no direct interaction with Maldonado or involvement with his
12 case. Docket No. 51, ¶ 3.1. Plaintiff's claims against Santiago and
13 Cartagena are also based upon their alleged failure to supervise
14 operations of the Vega Baja Precinct and adequately institute a
15 protocol for police officers on how to handle street people with drug
16 addictions. Docket No. 51, ¶ 4.19.

17 Defendant Pereira was the Secretary of Corrections at the time
18 Maldonado was incarcerated, but had no direct interaction with
19 Maldonado or involvement in his case. Docket No. 51, at ¶ 3.4.
20 Defendant Díaz was the Superintendent of the Bayamón Correctional
21 Complex at the time of Maldonado's incarceration but had no direct
22 interaction with Maldonado or involvement in his case. Docket No. 51,
23 ¶ 3.5. Plaintiff's claims against Defendants Pereira and Díaz are
24 based on their alleged failure to supervise and maintain adequate

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1 detox facilities and failure to institute or train employees on a
2 protocol for the handling of "street people" with drug addictions.
3 Docket No. 51, ¶¶ 3.4, 3.5, and 4.15.

4 Defendant Armendáriz was the Executive Director of the Puerto
5 Rico Medical Center during the time Maldonado was a patient at that
6 facility, but had no direct interaction or involvement with
7 Maldonado's case. Docket No. 51, ¶ 3.6. Plaintiff's claims against
8 Armendáriz are based upon Armendáriz' alleged failure to "establish,
9 implement, and/or make sure, that his employees followed a protocol"
10 for the care and treatment of "street people" with drug addictions,
11 and to ensure the ongoing availability of lab services and adequate
12 nursing services. Docket No. 51, ¶¶ 3.6 and 4.16.

13 II.

14 Factual Background

15 We review the facts supported by the record. On September 27,
16 2004, Román was on patrol with Officer Juan M. Pérez Luciano
17 ("Luciano") when he observed Maldonado, a "deambulante" (homeless
18 man), at Sánchez López Street in Alto Cuba, Vega Baja. Defts' SUMF
19 Nos. 3, 5 and 7; Pltf's Exhibit No. 5; Pltf's Reply ¶ 2. Román
20 observed Maldonado "walking in a negligent manner, moving from side
21 to side of the street, and lying down in the middle of the street."
22 Defts' SUMF No. 6; Pltf's Exhibit No. 5; Pltf's Reply ¶ 2. It is
23 undisputed that Maldonado used illegal drugs. Docket No. 51, at 6.
24 Presumably, Román was aware of Maldonado's habit on September 27,

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1 2004, because Román had previously counseled Maldonado about his drug
2 addiction. Defts' SUMF No. 4. At 12:15 p.m., Román issued a citation
3 to Maldonado for violation of Law 22, Art. 9.02, of the Transit Law.
4 Defts' SUMF No. 8. The citation required Román to appear before a
5 Judge on September 28, 2004, at 8:30 a.m. Defts' SUMF No. 8, 11, 13,
6 and 14. Román was not incarcerated on September 27, 2004. Defts' SUMF
7 No. 10.

8 Román's description of his intervention with Maldonado is
9 corroborated by the written statement of Officer Luciano, provided to
10 the Superintendent of Public Integrity, Police of Puerto Rico, on
11 January 4, 2005. Luciano's statement reads as follows: "Juan Díaz
12 Román proceeded to intervene with the individual that afterwards
13 resulted to be called Jorge Santos Maldonado, for art. 9.02(6) Law
14 22, reading him the legal warnings, then we proceeded to take him
15 before the presence of the Honorable Judge José V. Meléndez that
16 found cause, fixing a bond of \$200 dollars, that he did not post,
17 same being carried to Bayamón Jail 705." Pltff's Exhibit No. 5
18 (emphasis supplied); Plaintiff's Reply, ¶ 2. It is not clear from
19 Luciano's statement as to exactly when they proceeded to take
20 Maldonado before the Judge.

21 Román avers that he has never hit Maldonado. Defts' SUMF No. 9.
22 But, Plaintiff submits the sworn statement of Ramón Luis Martínez
23 Vélez (Vélez), who avers that in August 2004 he witnessed Román hit
24 Maldonado on the neck with his hand and in the lower part of the

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1 stomach with a black-jack. Pltf's Exhibit No. 1. Vélez also avers
2 that he witnessed Román hit Maldonado, arrest him, and take him away
3 on the morning of September 27 or 28 at approximately the same time
4 Román issued Maldonado the citation. Id.

5 Until Román's intervention with Maldonado, the Superintendent of
6 Public Integrity received no complaints concerning Román since his
7 admission on March 8, 2005. Defts' SUMF No. 62. On October 13, 2004,
8 Maldonado's father, Nicolás Santos Santos ("Santos"), filed the first
9 complaint on record against Román, alleging that Román arrested
10 Maldonando without cause. Defts' Exhibit No. 19. In response, the
11 Director of the Division of Public Integrity in the Puerto Rico
12 Police Department completed an investigation and found no cause for
13 or evidence to support Santos' complaint. Defts' SUMF No. 64; Defts'
14 Exhibit 20. As noted by Plaintiff, the Director's report indicates
15 that Román's intervention with Maldonado occurred on September 26,
16 2004, and not September 27, 2004. Id. But, Plaintiff himself alleges
17 that the intervention occurred on September 27, 2004. Pltf's Reply
18 ¶ 2.

19 In September 2004, Defendant Cartagena was Superintendent of the
20 Puerto Rico Police Department. Docket No. 51, at 2, ¶3.1; Defts' SUMF
21 No. 57. Cartagena is not now and was not in September 2004 Román's
22 direct supervisor. Defts' SUMF No. 60. Cartagena has never met
23 Plaintiff or his father, and did not confer with any police officers

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1 or others regarding the handling of Maldonado's case. Defts' SUMF
2 Nos. 58, 59 and 61.

3 According to the complaint, Maldonado appeared by himself before
4 Judge José V. Meléndez at 9:30 a.m. on September 28, 2004. Defts'
5 SUMF No. 14. Finding probable cause, Judge Meléndez set trial for
6 November 8, 2004. When Maldonado was unable to post bail, Judge
7 Meléndez ordered that Maldonado be remanded to the Bayamón
8 Correctional Facility. Defts' SUMF Nos. 16 and 17; Docket No. 137, at
9 02-03; Pltfs' Exhibit Nos. 2 and 3. As noted by Plaintiff, the date
10 of Judge Meléndez' signature on the complaint originally indicated
11 January 27, 2004, but would appear to have been subsequently changed
12 to January 28, 2004. Pltfs' Exhibit Nos. 2 and 3. The Magistrate's
13 secretary, however, wrote on the same complaint that Maldonado
14 appeared in court on September 28, 2004. Id.

15 On September 28, 2004, a police officer (not Román) delivered a
16 copy of the complaint to Santos, Maldonado's father. Pltf's Exhibit
17 No. 6; Pltf's Reply ¶4. The complaint provided to Santos was not
18 signed by Judge Meléndez. Pltf's Reply ¶2; Pltf's Exhibit No. 3.

19 Pursuant to Judge Meléndez' order, on September 28, 2004, Román
20 brought Maldonado to the Bayamón Correctional Facility, Bayamón
21 No. 705. Defts' SUMF No. 24. At Bayamón No. 705, Román filled out the
22 pre-admission form, indicating that, in his opinion, Maldonado was in
23 good physical shape, was not bleeding, was not in any medical danger,
24 was not unstable, did not show suicidal tendencies, made no attempt

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1 to escape, and did not need immediate medical attention. Defts' SUMF
2 No. 25. Román did not indicate on the pre-admission form that
3 Maldonado was under the influence of any drug or had a history of
4 drug abuse. The pre-admission form does not specifically request this
5 type of information, however. Docket No. 137, at 15. Defendants
6 represent that when Maldonado arrived at Bayamón No. 705, someone
7 asked Maldonado if he was "in need of immediate medical attention,"
8 "had ever received medical attention in Bayamón 705," and "in need of
9 certain medicines." Defts' SUMF Nos. 26, 27, and 28. Notations in the
10 pre-admission form indicate that these questions were answered in the
11 negative, either by Maldonado or for him. Defts' Exhibit No. 16.

12 During September and October 2004, Defendant Pereira was the
13 Secretary of Corrections and Defendant Díaz was the Regional Director
14 for the Northern Region of the Administration of Corrections, a
15 region which included Bayamón No. 705. Defts' SUMF No. 18, 31, and
16 32; Docket No. 51, ¶¶ 3.4, 3.5. Under Pereira and Díaz, the
17 Department of Corrections had a protocol for the care and treatment
18 of prisoners who are drug addicts, which included the use of a detox
19 facility. Defts' SUMF Nos. 21 and 22; Defts' Exhibit Nos. 2 and 3.
20 Neither Defendant Díaz nor Defendant Pereira have ever met Plaintiff
21 or his father and neither conferred with anyone in any way concerning
22 Maldonado's case. Defts' SUMF Nos. 19, 20, 23 and 36.

23 The Subdirector of the Administration of Corrections, Ramón Luis
24 Díaz Correa, who is not a named defendant in this case, avers that he

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1 received reports from a Superintendent and on-duty Commander, that
2 upon admission, Maldonado was immediately referred to "Infirmary 448
3 of Bayamón's 308 Institution." Defts' SUMF 29; Defts' Exhibit Nos. 4
4 and 17. On September 29, 2008, "Infirmary 448 of Bayamón's 308
5 Institution" referred Maldonado to the Puerto Rico Medical Center
6 emergency room because he had high blood pressure and "tachycardia."
7 Defts' SUMF 29; Defts' Exhibit Nos. 4 and 17. The Puerto Rico Medical
8 Center admitted Mr. Maldonado at 6:21 p.m. on September 29, 2004.
9 Defts' SUMF 37; Defts' Exhibit 8(a) and 17; Docket No. 137, at 6.
10 ¶ 4.11.

11 Medical records detail Maldonado's condition and the care he
12 received at the Puerto Rico Medical Center until his death on
13 October 4, 2004. Defts' Exhibit No. 8. The majority of Maldonado's
14 medical records submitted by Defendants are illegible and, therefore,
15 offer limited support for Defendants' Motion.¹ Maldonado's admission
16 record, dated September 29, 2004, indicates that upon admission,
17 Maldonado was in withdrawal from heroin and cocaine. Defts' Exhibit
18 No. 8(b). At 7:28 p.m. on September 29, 2004, the Radiology Division
19 completed a "Chest PA" exam. Defts' Exhibit No. 8. The Radiology
20 report indicates that Maldonado was suffering from tachypnea and in
21 drug withdrawal. Defts' Exhibit No. 8. Medical records indicate that

¹ In the future, the court recommends that the parties reproduce any illegible medical records using a word processing program for submission to the court, with affidavits validating the accuracy of copy.

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1 attending physicians or nurses made a written record of Maldonado's
2 condition at 8:45 a.m., 11:00 a.m., and 11:45 a.m. on September 30,
3 2004, at 9:45 a.m., 2:00 p.m. and 4:00 p.m. on October 1, 2004, and
4 at 7:00 p.m. and 9:00 p.m. on October 2, 2004. Defts' Exhibit No. 8;
5 Pltf's Exhibit No. 11; Pltf's Reply ¶ 8. A physician's note made at
6 9:00 p.m. on October 2, 2004 indicates that labs were unavailable due
7 to a system shutdown. Defts' Exhibit No. 8. Certain lab analyses were
8 run, including two for "hematology" on October 2 and 3, 2004, and one
9 for "coagulation" on October 3, 2004. A record entitled, "death
10 summary," indicates that nurses found Maldonado in cardiorespiratory
11 arrest at 6:30 a.m. on October 3, 2004, and that attempts were made
12 to resuscitate him. Defts' Exhibit No. 8. The attending physician
13 declared Maldonado dead at 6:40 a.m. Id.

14 On October 5, 2004, after Santos made repeated inquiries as to
15 his son's whereabouts, the police informed Santos of his son's death.
16 Pltf's Reply ¶5; Pltf's Exhibit No. 6. On October 7, 2004, Santos
17 identified his son's body at a forensic medical laboratory. Pltf's
18 Exhibit No. 7; Pltf's SUMF No. 7; Defts' Exhibit No. 9.

19 On February 22, 2005, Dr. Rodríguez issued a Forensic Medical
20 Report, detailing the autopsy results. Defts' Exhibit No. 9. The
21 report indicates that Maldonado died of natural causes, including
22 "cardiac arrhythmia associated with intramyocardial pathway of the
23 left coronary artery" and "chronic drug use." Defts' Exhibit No. 9.
24 Maldonado's death certificate, based on Dr. Rodríguez' report,

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1 indicates the same. Defts' Exhibit No. 10. Dr. Rodríguez' report does
2 not indicate that she found any recent marks, bruising or external
3 injury on Maldonado's body. Defts' Exhibit No. 9; Defts' SUMF No. 51.

4 During September and October 2004, Armendáriz was the Executive
5 Director of the Puerto Rico Medical Services Administration
6 (Administración de Servicios Médicos de Puerto Rico). Docket No. 51,
7 at 2, ¶3.6; Defts' Exhibit No. 5. Armendáriz does not know Plaintiff
8 or his father. Defts' SUMF No. 54 and 55. No person directly
9 responsible for the care and treatment of Maldonado from the time of
10 his admission on January 29, 2004, until his death on October 4,
11 2004, conferred with Armendáriz regarding Maldonado's care or
12 treatment. Defts' SUMF No. 38.

13 On November 15, 2006, the Puerto Rico Medical Services
14 Administration's Office of Legal Advice and Labor Relations issued an
15 investigative report detailing events leading up to the death of
16 Maldonado. Like the Forensic Medical Report, the investigative report
17 lists the cause of Maldonado's death to be "cardiac arrhythmia" and
18 "chronic narcotism" ("narcotismo crónico"). Pltf's Exhibit No. 9;
19 Pltf's Reply ¶11.

20 At the time of his death, Maldonado was in the custody of Manuel
21 Vélez Medina ("Medina"), an Officer of the Department of Corrections.
22 Pltf's Exhibit No. 8; Pltf's Reply ¶8. Plaintiff submitted a logbook
23 entry, that would appear to have been written and signed by one
24 Officer Medina. Pltf's Exhibit No. 8; Docket No. 145. According to

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1 the log, Medina made an entry in the logbook after returning to
2 Bayamón 705 from the Puerto Rico Medical Center at approximately
3 9:50 a.m. The log indicates that Medina witnessed the medical team²
4 perform what they themselves called "Respiratory Therapies" on
5 Maldonado after finding him in physical distress the morning of
6 October 3 2004. According to the logbook, Medina inquired with two
7 different physicians as to the cause of Maldonado's death.
8 Maldonado's emergency room physician, Carlos Tejeda, informed Officer
9 Medina that Maldonado died because he "suffered some secretions which
10 provoked some kind of asphyxia," but did not mention "cardiac
11 arrhythmia." Doctor Leslieane Castro Santana of Internal Medicine, who
12 certified Maldonado's death, informed Medina that the cause of death
13 was "cardiac infarction produced by cocaine and pneumonia." Pltf's
14 Reply ¶8; Pltf's Exhibit No. 8.

15 III.

16 Procedural Background

17 To clarify claims pending upon the filing of Defendants' Motion,
18 we review the court's prior partial judgment. On June 19, 2006, the
19 court entered partial judgment on three motions to dismiss, or
20 alternatively, for a more definite statement pursuant to the court's

² According to the logbook entry, the "medical team" consisted of Dr. Carlos Tejeda, an emergency room physician, Dr. Leslieane Castro Santana, of Internal Medicine, who certified Maldonado's death, and the following five nurses: Doris Dávila Cirino, Jesús Navarro, Araseli Matos, Francisca Castro, and Ana Figueroa.

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1 Opinion and Order of the same date. Docket Nos. 7, 15 and 31. The
2 court's entry of partial judgment dismissed with prejudice: (1) all
3 § 1983 claims brought by then Plaintiff Santos and JLSM, in their
4 personal capacity; (2) all Plaintiffs' § 1985 claims; (3) all
5 Plaintiffs' claims against Defendant Puerto Rico Medical Center and
6 Defendants Díaz, Armendáriz, Pereira, Cartagena, and Santiago in
7 their official capacities; and (4) granted moving Defendants' request
8 for a more definite statement. Docket Nos. 39 and 41. The court
9 ordered Plaintiff to file an amended complaint pursuant to deadlines
10 established in the court's forthcoming Case Management and Scheduling
11 Orders. Such amended complaint was to (1) "include an averment as to
12 the capacity in which [Plaintiff] is suing" and (2) "specify what
13 constitutional rights of decedent they allege were violated and, as
14 to each violation, which Defendant or Defendants they allege is
15 responsible." Id.

16 On July 7, 2006, Plaintiff untimely filed Plaintiff's Amended
17 Complaint.³ Docket Nos. 51. Plaintiff's Amended Complaint wholly
18 disregards the court's order, failing to specify "the constitutional
19 rights . . . they allege were violated and . . . which Defendant or
20 Defendants they allege is responsible." Defendants answered
21 Plaintiff's Amended Complaint without objection, however. Docket
22 No. 53.

³ Subsequent to the filing of Plaintiff's Amended Complaint, Plaintiff successfully petitioned for leave to amend. Docket No. 61.

On October 7, 2009, Defendants filed the pending Motion for Summary Judgment and Memorandum of Law followed by supporting exhibits. Docket Nos. 121 and 125. In their Motion, Defendants argue for the first time on record that Plaintiff failed to comply with the court's order to amend. Docket No. 121, at. The court granted Plaintiff two extensions of time to file his response to Defendants' Motion. Docket Nos. 127 and 135. Despite the court's leniency, on December 5, 2008, Plaintiff filed his response two days late. Docket No. 137. Even more troublesome, Plaintiff's response fails to clearly admit, deny or qualify Defendants' statement of material facts. Id. As required, we considered all facts not clearly denied, to be admitted. Fontanez-Nuñez v. Janssen Ortho LLC, 447 F.3d 50 (1st Cir. 2006). On January 26, 2009, Defendants filed their Reply to Plaintiff's Opposition. Docket No. 149.

IV.

Analysis

A. Standard of Review

The standard for summary judgment is straightforward and well-established. A district court should grant a motion for summary judgment "if the pleadings, depositions, and answers to the interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). A factual dispute is "genuine"

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1 if it could be resolved in favor of either party, and "material" if
2 it potentially affects the outcome of the case. Torres-Martinez v.
3 Puerto Rico Dept. of Corrections, 485 F.3d 19, 22 (1st Cir.
4 2007) (citing Calero-Cerezo v. U.S. Dep't of Justice, 355 F.3d 6, 19
5 (1st Cir. 2004)).

6 The moving party carries the burden of establishing that there
7 is no genuine issue as to any material fact; however, the burden "may
8 be discharged by showing that there is an absence of evidence to
9 support the nonmoving party's case." See Celotex Corp. v. Catrett,
10 477 U.S. 317, 325 (1986). The burden has two components: (1) an
11 initial burden of production, which shifts to the non-moving party if
12 satisfied by the moving party; and (2) an ultimate burden of
13 persuasion, which always remains on the moving party. See Freadman v.
14 Metropolitan Property and Cas. Ins. Co., 484 F.3d 91, 99-100 (1st
15 Cir. 2007).

16 The non-moving party "may not rest upon the mere allegations or
17 denials of the adverse party's pleadings, but . . . must set forth
18 specific facts showing that there is a genuine issue for trial." FED.
19 R. Civ. P. 56(e). Summary judgment cannot be defeated by relying on
20 "improbable inferences, conclusory allegations, or rank speculation."
21 Ingram v. Brink's, 414 F.3d 222, 228-29 (1st Cir.2005). Summary
22 judgment exists "to pierce the boilerplate of the pleadings and
23 assess the proof in order to determine the need for trial."
24 Euromodas, Inc. v. Zanella, 368 F.3d 11, 16-17 (1st Cir. 2004) (citing

1 Wynne v. Tufts Univ. Sch. of Med., 976 F.2d 791, 794 (1st Cir.

2 1992)).

3 **B. Plaintiff's Section 1983 claims against Defendants' Pereira,**
4 **Santiago, Cartagena, Armendáriz, Díaz and Román, in their**
5 **official capacities.**
6

7 Defendants argue for dismissal of Plaintiff's Section 1983 claims
8 against Defendants Pereira, Cartagena, Armendáriz, Díaz-Correa, and
9 Díaz-Román in their official capacity on the ground that such claims
10 were previously dismissed by the court with prejudice. Indeed, we
11 dismissed Plaintiff's Section 1983 official-capacity claims in our
12 prior Opinion, Order, and Partial Judgment, holding that Defendants
13 are entitled to Eleventh Amendment immunity. Docket No. 39 and 40
14 (June 19, 2006). Plaintiff nevertheless attacks the court's prior
15 partial judgment, arguing that Defendants "do not qualify for any
16 immunity." Docket No. 137, at 22.

17 In support of his argument, Plaintiff relies solely on an excerpt
18 from the United States Supreme Court's opinion in Padilla Román v.
19 Hernández Pérez, 381 F.Supp. 2d 17 ("Third, a citizen may seek
20 monetary damages against a state officer for acts done while the
21 officer was acting in his or her official capacity.") (citing
22 Kentucky v. Graham, 473 U.S. 159, 105 S.Ct. 3099, 87 L.Ed.2d 114
23 (1985)). Plaintiff's reliance on Padilla and Kentucky is misplaced.
24 In Padilla, this court relied on Kentucky for the proposition that "a
25 citizen may seek monetary damages against a state officer for acts
26 done while the officer was acting in his or her official capacity."

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1 But, the above language from Padilla refers to Section 1983 suits
2 brought against state officers in their personal capacity, not their
3 official capacity. This is evident on review of the Supreme Court's
4 opinion in Kentucky.⁴ Kentucky reiterates the difference between
5 official-capacity and personal-capacity suits brought pursuant to
6 Section 1983, namely, that citizens may seek monetary damages against
7 state officers in their personal capacity for acts done while acting
8 in their official capacity. Kentucky, 473 U.S. at 166, 105 S.Ct. at
9 3105, 87 L.Ed.2d 114 (1985) ("On the merits, to establish personal
10 liability in a section 1983 action, it is enough to show that the
11 official, acting under color of state law, caused the deprivation of
12 a federal right.") (citing Monroe v. Pape, 365 U.S. 167, 81 S.Ct.
13 473, 5L.Ed.2d 492 (1961)).

14 It is well-established that an award of damages in federal court
15 against state officers sued in their official capacity under Section
16 1983 is barred by the Eleventh Amendment. See Docket No. 39, at 14-
17 16. The court's prior Partial Judgment stands as the law of the case.
18 Gener-Villar v. Adcom Group, Inc., 530 F.Supp.2d 392, 403, fn 7
19 (D.P.R. 2007) ("the law of the case . . . is invoked to require a
20 court to follow its own rulings in a case"). Accordingly, Plaintiff's
21 Section 1983 claims brought against Defendants in their official

⁴ In Kentucky, the Supreme Court held that a prevailing plaintiff cannot recover attorney's fees from a governmental entity pursuant to 42 U.S.C. § 1988 when they sue governmental employees in their personal capacities and prevail.

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1 capacity are **DISMISSED** pursuant to the court's prior Opinion, Order
2 and Partial Judgment. Docket Nos. 39 and 40.

3 **C. Plaintiffs' Section 1983 claims against Defendants' Pereira,**
4 **Santiago, Cartagena, Armendáriz, Díaz and Román in their personal**
5 **capacities.**
6

7 Defendants present two arguments in support of summary judgment
8 on Plaintiff's Section 1983 personal-capacity claims. First,
9 Defendants contend that Plaintiff's Amended Complaint fails to state
10 a Section 1983 personal-capacity claim against Defendants because
11 Plaintiff's claims are based on conduct carried out "under color of
12 state law." Docket No. 121, at 05-06. Defendants' argument is
13 untenable. Clearly, Plaintiff's Amended Complaint refers to the
14 conduct of Defendants acting "under color of state law," but this
15 allegation is necessary, not detrimental, to Plaintiff's Section 1983
16 personal-capacity claims. Personal liability in a Section 1983 action
17 is predicated on a "[state] official, acting under color state law,
18 causing the deprivation of a federal right." Hafer v. Melo, 502 U.S.
19 21, 25, 112 S.Ct. 358, 362, 116 L.Ed.2d 301 (1991) (emphasis
20 supplied).

21 Second, Defendants contend that Plaintiff's Section 1983
22 personal-capacity claims should be summarily dismissed because
23 Plaintiff fails to establish a causal connection between the conduct
24 of Defendants and the alleged deprivation of rights, privileges or
25 immunities secured by the Constitution. Defendants' second argument
26 is well-taken.

1 The essential elements of a section 1983 claim are that (1) "the
2 defendants acted under color of state law" and (2) "the defendants'
3 conduct worked a denial of rights secured by the Constitution or by
4 federal law." Rodriguez-Cirillo v. Garcia, 115 F.3d 50, 52 (1st
5 Cir.1997) (citing Martinez v. Colón, 54 F.3d 980, 984 (1st Cir.1995)).
6 To satisfy the second element, "plaintiffs must show that the
7 defendants' conduct was the cause in fact of the alleged
8 deprivation." Rodriguez, 115 F.3d at 52 (citing Gutierrez-Rodriguez
9 v. Cartagena, 882 F.2d 553, 559 (1st Cir.1989)) (emphasis supplied).

10 Supervisory liability under 42 U.S.C. 1983, "cannot be predicated
11 on a respondeat superior theory . . . but only on the basis of [the
12 supervisor's] own acts or omissions." Seekamp v. Michaud, 109 F.3d
13 802, 808 (1st Cir.1997) (citing Sanchez v. Alvarado, 101 F.3d 223, 227
14 (1st Cir.1996)).

15 [A] supervisor: can be held liable . . . if (1)
16 the behavior of [his] subordinates results in a
17 constitutional violation, and (2) the
18 [supervisor]'s action or inaction was
19 'affirmative[ly] link[ed]' to that behavior in
20 that it could be characterized as 'supervisory
21 encouragement, condonation or acquiescence' or
22 'gross negligence amounting to deliberate
23 indifference.' Moreover, the indifference
24 required to support supervisory liability under
25 section 1983 must be "deliberate, reckless or
26 callous.' Thus, the 'affirmative link' required
27 between the action or inaction of a supervisor
28 and the behavior of subordinates 'contemplates
29 proof that the supervisor's conduct led
30 inexorably to the constitutional violation.'

1 Id. (citations omitted). In determining supervisory liability under
2 Section 1983 for a constitutional violation, an important factor to
3 consider is whether the official was put on some kind of notice of
4 the alleged violations. Lipsett v. Univ. of Puerto Rico, 864 F.2d
5 881, 902 (1st Cir.1988).

6 [O]ne cannot make a 'deliberate' or 'conscious'
7 choice to act or not to act unless confronted
8 with a problem that requires the taking of
9 affirmative steps. Once an official is so
10 notified, either actually or constructively, it
11 is reasonable to infer that the *failure* to take
12 such steps, as well as the actual *taking* of them
13 constitutes a choice 'from among various
14 alternatives.'

15 Id. (citations omitted). It is critical to remember when considering
16 the liability of a supervisor for an alleged constitutional violation
17 that a "constitutional violation by a subordinate is a predicate to
18 a supervisor's liability." Mendez v. Toledo, 968 F.Supp. 27, 36
19 (D.P.R. 1997). A supervisor cannot be held accountable if his or her
20 subordinate did not violate a constitutional right. Id.

21 Having thoroughly combed the record, the court now considers
22 Defendants' alleged conduct against the above authority. Docket
23 No. 137, at 22.

24 **1. Plaintiff's Section 1983 claims against Defendant Román in**
25 **his personal capacity.**
26

27 Plaintiff generally contends that Román's actions violated
28 Maldonado's right to life, physical integrity, freedom from bodily
29 harm, and due process of law in violation of the Fourth, Fifth,

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1 Eighth, and Fourteenth Amendments. Docket No. 137, at 22. The Eighth
2 Amendment is not applicable here because there was never a formal
3 adjudication of guilt through the criminal prosecution of Maldonado.
4 McLeod-Lopez v. Algarin, 2009 WL 736118, *5; Martinez-Rivera v.
5 Sanchez-Ramos, 498 F.3d 3, 8 (1st Cir.2007) ("because there had been
6 no formal adjudication of guilt against [Plaintiffs] at the time of
7 the alleged constitutional deprivation, the Eighth Amendment is
8 inapplicable and any claim brought on that theory was properly
9 dismissed."). Furthermore, "excessive force" claims like Plaintiff's
10 are not actionable under the Fifth and Fourteenth Amendments. Graham
11 v. Connor, 490 U.S. 386, 395 (1989) ("all claims that law enforcement
12 officers have used excessive force-deadly or not-in the course of
13 . . . [the] 'seizure' of a free citizen should be analyzed under the
14 Fourth Amendment and its 'reasonableness' standard, rather than under
15 a 'substantive due process' approach."); Terry v. Ohio, 392 U.S. 1,
16 16 (1968) (writing that the Fourth Amendment applies "whenever a
17 police officer accosts an individual and restrains his freedom to
18 walk away."). We, therefore, limit our analysis to Román's liability
19 for an alleged "unreasonable seizure" in violation of the Fourth
20 Amendment.

21 Under the Fourth Amendment, all persons are entitled to be
22 "secure in their persons . . . against unreasonable searches and
23 seizures." In a traditional sense, a "seizure" occurs "[o]nly when
24 the officer, by means of physical force or show of authority, has in

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1 some way restrained the liberty of a citizen." Terry, 392 U.S. at 19,
2 n.16. More recent jurisprudence would require "an intentional
3 acquisition of physical control" and a "governmental termination of
4 freedom of movement through means intentionally applied." Brower v.
5 County of Inyo, 489 U.S. 593, 596-97, 109 S.Ct. 1378, 103 L.Ed.2d 628
6 (1989). To prevail on a claim for violation of the Fourth Amendment
7 based on the use of excessive force, a plaintiff must show that the
8 defendant officer employed an unreasonable amount of force under the
9 circumstances. McLeod-Lopez v. Algarin, 2009 WL 736118, *7 (D.P.R.
10 2009); Jennings v. Jones, 499 F.3d 2, 11 (1st Cir.2008). A Fourth
11 Amendment reasonableness inquiry is an objective test, to be
12 determined "in light of the facts and circumstances confronting [the
13 officer], without regard to their underlying intent or motivation."
14 Graham, 490 U.S. at 397. Facts of particular relevance include "the
15 severity of the crime at issue, whether the suspect poses an
16 immediate threat to the safety of the officers or others, and whether
17 he is actively resisting arrest or attempting to evade arrest by
18 flight." Id. at 396.

19 A Fourth Amendment violation may also occur when persons acting
20 under color of state law maliciously prosecute baseless criminal
21 charges, provided that such prosecution occasions "a deprivation of
22 liberty consistent with the concept of a seizure." Nieves v.
23 McSweeney, 241 F.3d 46, 54 (1st Cir.2001); Britton v. Maloney, 196
24 F.3d 24, 28 (1st Cir.1999). Notably, it is the deprivation of liberty

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1 resulting from the prosecution, not the prosecution itself, that
2 triggers a Fourth Amendment claim under Section 1983. What suffices
3 for a "seizure" arising from prosecution of unfounded charges varies
4 among the circuits. We need not review these cases in depth here for
5 the reasons provided below. See, e.g., Gallo v. City of Philadelphia,
6 161 F.3d 217, 222 (3rd Cir.1998) (concluding that conditions imposed
7 on pretrial release, including the payment of a bond and restrictions
8 on travel, effected a seizure).

9 We now turn to whether the evidence submitted by Plaintiffs in
10 support of their allegations is sufficient to sustain a claim against
11 Román for violation of the Fourth Amendment under either of the
12 aforementioned theories. Plaintiff's Section 1983 claims against
13 Román for the alleged "unreasonable seizure" of Maldonado in
14 violation of the Fourth Amendment are based, in part, on allegations
15 that Román filed an "untrue report and complaint," acts which led to
16 Maldonado's incarceration pending trial for the alleged violation of
17 Law 22, Art. 9.02G of the Transit Law. Docket No. 51, ¶¶ 3.2, 4.1,
18 4.3, 4.4, 4.8, and 4.13. The incarceration of Maldonado may
19 constitute an unreasonable seizure in violation of the Fourth
20 Amendment if Román in fact issued the citation for violation of
21 Traffic Law 22 without cause. The evidence simply does not support
22 such a conclusion, however. Plaintiff offers no evidence to counter
23 the sworn statement of Defendant Román that he found Maldonado
24 "walking in a negligent manner, moving from side to side of the

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1 street, and lying down in the middle of the street," Officer
2 Luciano's corroborating testimony, and a finding of probable cause by
3 Judge Meléndez. Defts' Exhibit No. 6. Accordingly, we find that the
4 incarceration of Maldonado pending trial did not constitute an
5 unreasonable seizure in violation of the Fourth Amendment.

6 Regarding the alleged use of excessive force by Román against
7 Maldonado, the evidence is not so heavily weighted. Plaintiff submits
8 the eyewitness testimony of Vélez, who avers that in mid-August, he
9 saw Román hit Maldonado in the back of the neck with his hand and in
10 the lower stomach with a black-jack. Vélez further avers that he
11 witnessed Román "hit" Maldonado again on September, 27, 2004.
12 Defendants counter Vélez' version of the events with the sworn
13 statement of Román and a statement provided by Officer Luciano in an
14 investigative interview. Luciano was with Román when he intervened
15 with Maldonado on September 27, 2004, but apparently not in August
16 2004. Luciano's statement as to what occurred on September 27, 2004,
17 makes no reference at all to physical abuse. But, Luciano's statement
18 does not expressly state that such abuse did not occur.

19 In consideration of the above submissions, we find an issue of
20 material fact to exist regarding Plaintiff's Section 1983 claim
21 against Román for the alleged violation of Maldonado's right to be
22 free from unreasonable seizure. Under the record presently before the
23 court, summary disposition of Plaintiff's Fourth Amendment claim
24 against Román would, therefore, be inappropriate. Accordingly,

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1 Defendants' Motion on Plaintiff's Section 1983 claims against
2 Defendant Román in his personal capacity for violation of the Fourth
3 Amendment is hereby **DENIED**.

4 **2. Plaintiff's Section 1983 claims against Defendants Santiago**
5 **and Cartagena in their personal capacities.**

6 There is no evidence in the record to affirmatively link the
7 conduct of Defendant Santiago, Officer Román's supervisor, and
8 Defendant Cartagena, the Superintendent of Puerto Rico Police, to the
9 allegedly unconstitutional intervention by Román. Plaintiff does not
10 deny that Defendants Cartagena and Santiago had no direct involvement
11 with Maldonado's case. There is no evidence in the record to suggest
12 that Román conferred with Cartagena or Santiago regarding events that
13 occurred on September 27, 2004, when Roman intervened with Maldonado.
14 Although Santiago signed Román's incident report, there is no
15 evidence before the court to suggest that Santiago did so
16 understanding the report to be false. There is simply no connection
17 between the conduct of Cartagena and Santiago and the allegedly
18 unconstitutional conduct of Román. Accordingly, Defendants' Motion on
19 Plaintiff's Section 1983 claims against Defendants Santiago and
20 Cartagena in their personal capacities is **GRANTED**.

21 **3. Plaintiff's Section 1983 claims against Defendants Pereira**
22 **and Díaz in their personal capacities.**

23 There is no evidence in the record to affirmatively link the
24 conduct of Defendant Pereira, the Secretary of Corrections, or
25 Defendant Díaz, the Superintendent of Bayamón Correctional Complex,

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1 to the incarceration and treatment of Maldonado in "Infirmary 448."
2 More importantly, there is no clear, underlying constitutional
3 violation by subordinate employees, a prerequisite to supervisory
4 liability.

5 Contrary to Plaintiff's assertions, at the time of Maldonado's
6 incarceration in "Infirmary 448 of Bayamón's 308 Institution," the
7 Correctional Health Services Program had an established protocol for
8 the caring of inmates with drug addictions. Docket No. 133.
9 Noticeably absent from the record, however, is any evidence that
10 employees of the Department of Corrections deviated from the guide's
11 prescriptions or that Defendants encouraged, condoned or acquiesced
12 in such behavior. There is not a scintilla of evidence to support
13 Plaintiff's Section 1983 personal-capacity claims against Defendants
14 Perira and Díaz. Accordingly, Defendants' Motion on Plaintiff's
15 Section 1983 claims against Defendants Pereira and Díaz is **GRANTED**.

16 **4. Plaintiff's Section 1983 claims against Defendant Armendáriz**
17 **in his personal capacity.**

18 There is no evidence in the record to affirmatively link the
19 conduct of Defendant Armendáriz, the Executive Director of the Puerto
20 Rico Medical Center, to the care and treatment of Maldonado while he
21 was a patient at the Puerto Rico Medical Center. It is undisputed
22 that Defendant Armendáriz never met Maldonado and did not confer with
23 attending physicians, nurses, or other employees regarding
24 Maldonado's care and treatment. Plaintiff appears to base

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1 Armendáriz' liability solely on Armendáriz' alleged failure "to
2 establish, implement, and/or make sure, that his employees followed
3 a protocol" for the care and treatment of street people with drug
4 addictions. Defendant Armendáriz does not dispute Plaintiff's
5 assertion that such a protocol did not exist. But, the court finds
6 the existence or nonexistence of such a protocol to be
7 inconsequential. It is the primary mission of the Puerto Rico Medical
8 Center to provide medical care to people who are ill. An established
9 protocol for the treatment of each type of illness would hardly seem
10 necessary.

11 That said, Plaintiff's submissions do raise some interesting
12 issues. With the support of medical expert testimony, Maldonado's
13 medical records may create an issue of fact as to whether Maldonado
14 received adequate attention after 9:00 p.m. on October 2, 2009.
15 Defts' Exhibit No. 8. A medical expert's opinion on reports provided
16 by doctors to Officer Medina may bring into question whether the
17 forensic medical report accurately documented Maldonado's cause of
18 death. But again, there is no evidence in the record before this
19 court that Defendant Armendáriz encouraged, condoned or acquiesced in
20 the delivery of substandard care to Maldonado or a misdiagnosis as to
21 his cause of death. Accordingly, Defendants' Motion on Plaintiff's
22 Section 1983 claims against Defendant Armendáriz in his official
23 capacity is **GRANTED**.

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V.

Conclusion

For the reasons stated above, Defendants' Motion for Summary Judgment is **GRANTED in part**. Plaintiff's Section 1983 claims against all Defendants in their official capacities are **DISMISSED** pursuant to the court's prior Opinion, Order, and Partial Judgment. Docket Document Nos. 39 and 40. Defendants' Motion on Plaintiff's Section 1983 claims against Defendants Santiago, Cartagena, Pereira, Díaz, and Armendáriz in their personal capacities is **GRANTED**. Having summarily disposed of Plaintiff's Section 1983 claims against Defendants Santiago, Cartagena, Pereira, Díaz, and Armendáriz, Plaintiff's supplemental claims brought pursuant to 28 U.S.C. § 1367(a) against the same Defendants are **DISMISSED** with prejudice. 28 U.S.C. § 1367(c)(3).

Following disposition of Defendants' Motion, the issue remaining to be adjudicated in this case is Plaintiff's Section 1983 claim against Defendant Román for an alleged Fourth Amendment violation.

IT IS SO ORDERED.San Juan, Puerto Rico, this 27th day of March, 2009.

S/José Antonio Fusté
JOSE ANTONIO FUSTE
Chief U. S. District Judge